

**ENTERED**

May 04, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

GUADALUPE SAN MIGUEL-LIMON,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

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CIVIL ACTION NO. 1:21-CV-011

CRIM. ACTION NO. 1:15-CR-177-1

**ORDER ADOPTING REPORT AND RECOMMENDATION**

Petitioner Guadalupe San Miguel-Limon filed a motion to vacate, set aside, or correct his sentence pursuant to 42 U.S.C. § 2255. (Motion, Doc. 1) San Miguel-Limon primarily argues that the sentencing court improperly assessed a 16-level enhancement for a crime of violence.

The Magistrate Judge issued a Report and Recommendation (Doc. 8) recommending that the Motion be dismissed as untimely filed, or alternatively, denied as meritless. San Miguel-Limon timely filed objections. (Doc. 15)

The Court has conducted a *de novo* review of the record and the applicable law. In his objections to the Report and Recommendation, San Miguel-Limon raises arguments that he presented in his Motion and that the Report and Recommendation ably and correctly addresses. He raises no objections that demonstrates any error in the analysis contained within the Report and Recommendation.<sup>1</sup>

Accordingly, the Court **OVERRULES** San Miguel-Limon's objections and **ADOPTS** the Report and Recommendation (Doc. 8). It is:

**ORDERED** that Guadalupe San Miguel's Motion Pursuant to 28 U.S.C. § 2255 (Doc. 1) is **DISMISSED** as untimely filed or, alternatively, **DENIED AS MERITLESS**.

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<sup>1</sup> Contrary to the statement in the Report and Recommendation, San Miguel-Limon did file objections to the Presentence Report and Recommendation. (See Case No. 1:15-CR-00177, CM/ECF Doc. 13) The sentencing court overruled the objections. (See Case No. 1:15-CR-00177, Minute Entry for Aug. 24, 2015) This minor factual discrepancy does not affect the legal analysis within the Report and Recommendation.

A petitioner may receive a Certificate of Appealability only if he makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). To satisfy this standard, a petitioner must demonstrate that jurists of reason could disagree with the court’s resolution of his constitutional claims or that jurists could conclude that the issues presented are adequate to deserve encouragement to proceed further. *Miller-El*, 537 U.S. at 327; *Moreno v. Dretke*, 450 F.3d 158, 163 (5th Cir. 2006). A district court may *sua sponte* rule on a Certificate of Appealability, because the court that denies relief to a petitioner is in the best position to determine whether the petitioner has made a substantial showing of a denial of a constitutional right on the issues before the court. *Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000).

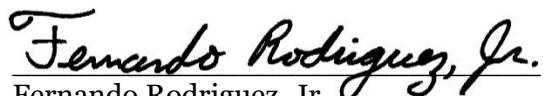
After reviewing San Miguel-Limon’s Section 2255 motion and the applicable Fifth Circuit precedent, the Court is confident that no outstanding issue would be debatable among jurists of reason. Although San Miguel-Limon’s Motion raises issues that the Court has carefully considered, he fails to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Accordingly, a Certificate of Appealability is **DENIED**.

In addition, San Miguel-Limon notes that his address will change in May 2021 due to his release. (Doc. 15) Accordingly, it is:

**ORDERED** that the Clerk of Court send an additional copy of this Order to Guadalupe San Miguel-Limon at 6250 Sioux, Brownsville, Texas 78521.

The Clerk of Court is directed to close this matter.

Signed on May 4, 2021.

  
Fernando Rodriguez, Jr.  
United States District Judge